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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/594,198

09/25/2006

David L. Hauser

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7047

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06/19/2009

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EXAMINER

HORNBERGER, JENNIFER LEA

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

06/19/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/594,198	Applicant(s) HAUSER ET AL.	
	Examiner JENNIFER L. HORNBERGER	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04/13/2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-28 and 31-36 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18, 19, 22, 26, 27, 31, 33, 34 and 36 is/are rejected.
- 7) ☒ Claim(s) 20, 21, 23-25, 28, 32 and 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/13/2009 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 18, 19, 22, 26, and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Elmaleh (US 2007/0093744 A1).

Regarding claim 18, Elmaleh discloses an implantable vascular filter, comprising: an implantable filter body (12 and 16) having a substantially conical shape (16; Figures 14 and 16), the filter body configured to be expanded and secured to an inner wall of a blood vessel; and an implantable agitation member (25) movably coupled to the filter body (paragraph 65); wherein the filter body and the agitation member are detachable from a delivery catheter for implantation in the blood vessel and wherein the agitation member is adapted to break apart particles captured within the filter body (paragraph 2).

Regarding claim 19, Elmaleh discloses the agitation member (25) is located substantially within an interior volume of the filter body (paragraph 62, Figures 14 and 16).

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Regarding claim 22, Elmaleh discloses an elongate drive mechanism configured for removable attachment to the agitation member, wherein the agitation member is adapted to be powered by the elongate drive mechanism for causing the agitation member to rotate (paragraph 74-75).

Regarding claims 26 and 27, Elmaleh discloses the agitation member is configured to vibrate at ultrasonic frequencies for breaking apart the particle (paragraph 62).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 31, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elmaleh in view of Pavcnik et al. (US 5,350,398).

Regarding claim 31, Elmaleh discloses an implantable device configured to capture and macerate emboli within a blood vessel, comprising: an expandable filter body (12 and 16); an agitation member (25) located substantially within an interior volume of the filter body (Figures 14 and 16), the agitation member permanently coupled to the filter body (paragraph 65); and a drive mechanism for rotating the agitation member with respect to the filter body (paragraph 67); wherein the filter body is and the agitation member are detachable from a delivery catheter for fixation in the blood vessel and wherein the agitation member is configured to macerate emboli captured within the filter body (paragraph 2). Elmaleh fail to disclose the filter body having anchoring members for engaging the inner wall of the blood vessel. Pavcnik et al disclose a plurality of hooks or barbs (28) for fixing the filter (10) to the vessel lumen to prevent migration

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of the filter (col. 3, ln. 55). It would have been obvious to provide barbs on the filter of Elmaleh in order to prevent migration.

Regarding claim 33, Elmaleh discloses an elongate drive mechanism configured for removable attachment to the agitation member, wherein the agitation member is adapted to be powered by the elongate drive mechanism for causing the agitation member to rotate (paragraph 74-75).

Regarding claim 34, Elmaleh discloses an aspiration catheter configured for advancement along the elongate drive catheter (paragraph 76-77).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Demarais et al. (US 2002/0151906) in view of Muni et al. (US 6,805,692).

Demarais et al. disclose device thrombus removal system configured to improve blood flow through a blood vessel, comprising: a filter body (304) permanently fixed to a distal end portion of an outer catheter, the outer catheter having a length for extending from a location outside the body to a treatment site in a blood vessel (Fig. 9), the filter body configured to capture and hold embolic particles, the filter body having a flexible membrane supported by a plurality of stiff members and wherein the stiff members are biased to hold the filter body open in an unconstrained condition (paragraphs 56-57); an a rotatable agitation member (310) permanently fixed to a distal end portion of an inner catheter, the inner catheter being centrally disposed within the outer catheter such that the filter body provides a centering mechanism for

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the agitation member and wherein the agitation member being is rotatably and slidably coupled to the filter body; wherein the rotatable agitation member is longitudinally advanceable to a location distal to the filter body for breaking apart a thrombus located distal to the filter body and wherein the filter body is configured to collapse into the aspiration catheter for withdrawing captured particles from the blood vessel while captured particles are contained within the filter body (paragraph 61). Demarais et al. disclose suction may be applied to port 62 to provide aspiration through catheter body 302. Muni et al. disclose aspirating by providing suction through a therapy catheter or alternatively by providing suction through an additional catheter sized for slidable advancement over a therapy catheter and applying a negative pressure in the annular region between an outer wall of the therapy and an inner wall of the aspiration catheter (col. 14, ln. 17-24). It would have been obvious to one of ordinary skill in the art to alternatively provide an additional aspiration catheter slidable over the outer catheter (302) of Demarais et al. and to apply a negative pressure in the annular region between an outer wall of the therapy catheter and an inner wall of the aspiration catheter rather than providing suction through the outer catheter since Muni et al. disclose that the techniques are interchangeable as they are both well known in the art for providing suction to a surgical site. Substitution of one known element for another element providing the same function to yield predictable results would have been obvious to one of ordinary skill in the art at the time of the invention.

Allowable Subject Matter

8. Claims 20, 21, 23-25, 28, 32, and 35 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

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9. Applicant's arguments with respect to claim 18, 31, and 36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER L. HORNBERGER whose telephone number is (571)270-3642. The examiner can normally be reached on Monday through Friday from 8am-5pm, Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571)272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlh
06/12/2009

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734